lature of the Colony of Singapore. Section 52 of the Order in Council empowers the Legislature to make laws for the peace, order and good government of the Colony. The test is, therefore, whether section 3(1) of the Preservation of Public Security Ordinance is for the peace, order and good government of the Colony, notwithstanding the fact that it may relate to persons, acts or things beyond the limits of the Colony. In my opinion, as the subsection provides for public security and aims at stamping out activities prejudicial to public security carried on in the Federation of Malaya and the Colony by a subversive organization operating in both territories, it is for the peace, order and good government of the Colony. I accordingly held that the subsection was not *ultra vires* the Legislative Assembly of the Colony.

Having reached this conclusion, I took the view that it was not necessary to decide the point contended for by the Solicitor-General, that the expressions "peace, order and good government of the Colony" included certain matters set out in section 61 of the Order in Council, which deals with the Governor's reserved power. It became unnecessary, therefore, for me to decide two points submitted on behalf of the applicant for my consideration in the event of my accepting the Solicitor-General's contention.

The next point urged on behalf of the applicant was that, where a statute requires that a public officer should be satisfied of something before exercising a statutory power, if it could be shown that there were no grounds on which he could be so satisfied, the Court might infer either that he did not honestly form that view or that, in forming it, he could not have applied his mind to the relevant facts. Counsel cited the case of *Ross-Clunis* v. *Papadopoullos,*[3] in support of his submission. In that case the Judicial Committee of the Privy Council laid down the principle relied on by counsel as a qualification of the subjective test which the House of Lords in *Liversidge* v. *Anderson,*[4] considered was imposed by the words "If the Secretary of State has reasonable grounds to believe". Counsel said that the affidavit of the Chief Secretary merely stated in paragraph 2:

> "The facts of the said Choo Jee Jeng's case were laid before the Governor in Council. The Governor in Council considered the matter and was satisfied that with a view to preventing the said Choo Jee Jeng from acting in a manner prejudicial to the security of Malaya and the maintenance of public order therein his detention is necessary."

It was further said that the affidavit showed no grounds on which the Governor could be satisfied that the detention was necessary. Counsel accordingly invited the Court to infer that the Governor did not honestly form the view that the detention was necessary or that, in forming it, he could not have applied his mind to the relevant facts. Counsel admitted, however, that a statement of the grounds of detention had been supplied to the applicant in accordance with section 5(2) of the Preservation of Public Security Ordinance. Under the circumstances, counsel failed to show that there were no grounds on which the Governor could be satisfied that the detention was necessary. It followed, therefore, that neither of the inferences suggested by counsel could be drawn.

The last point taken on behalf of the applicant was that the statement of the grounds of detention supplied to the applicant was inadequate and, therefore, that the detention was improper. In my opinion, as section 3(1) of the Preservation of Public Security Ordinance imposed a subjective test, it was not open to the Court to inquire whether in fact the Governor had reasonable grounds for being satisfied that the detention was necessary: *Liversidge* v. *Anderson, ante.* If the Ordinance did not impose a subjective test, I would have refused a writ of *habeas corpus* on the ground that an alternative remedy was available and that a writ of *habeas corpus* not being a writ of course might be refused for that reason: *Ex parte Corke.*[5] The alternative remedy was the right of appeal under section 5(1) of the Ordinance to the Appeal Tribunal established under the Ordinance. It was, in fact, in the applicant's own interests to appeal to the Appeal Tribunal rather than apply to this Court for a writ of *habeas corpus,* as the Appeal Tribunal is empowered by section 5(2) of the Ordinance to direct the Chief Secretary to supply such further information as it considers necessary to enable a person to present his case before it.

For the above reasons I discharged the order *nisi.*

Order accordingly.

Solicitors: *Marshall & Smith.*

CITY COUNCIL OF SINGAPORE v. TONG TECK SENG & ORS.

[C.A. (Rose C.J., Buttrose and Ambrose JJ.) July 3, 1959]

[Singapore — Civil Appeal No. 5 of 1959]

Local Authority — Rating — Assessment — Notice to amend annual value assessed under Municipal Ordinance after coming into operation of repealing Local Government Ordinance, 1957 — Provision of repeal of Municipal Ordinance not brought into operation — Practical necessity for both Ordinances to be in concurrent operation.

Legislation — Re-enacting Ordinance — Parts and provisions coming into operation on different dates — Application of implied repeal doctrine.

In this case the respondents were owners of No. 2 St. Thomas Walk, having purchased it in September 1957 and the annual value on which the property had been assessed at that time was $2,880. In January 1958, pursuant to the provisions of section 64 of the Municipal Ordinance the appellant served a notice on the respondents to amend the said annual value to $13,000 for the year 1958, and in May 1958 they were notified that the Assessment Committee of the appellant, at its meeting held on April 22, 1958, had fixed the annual value of the property at that amount with effect from January 1,

1958. In the Court below the respondents sought for a declaration that the order made by the Assessment Committee fixing the annual value of the property under the provisions of the Municipal Ordinance was null and void and of no effect in law on the grounds that the provisions relating to Rates under the Municipal Ordinance were impliedly repealed by the corresponding provisions in the Local Government Ordinance when by December 21, 1957 all the provisions of the re-enacting Ordinance had been brought into operation, with the exception of section 320(1) which provided for the repeal of the Municipal Ordinance. The learned trial Judge held that the notice under section 64 of the Municipal Ordinance was bad in law and the order of the Assessment Committee was null and void and of no effect in law. He also held that by implication the provisions of the Municipal Ordinance were repealed whenever the corresponding provisions of the Local Government Ordinance were brought into operation. On appeal,

Held: (1) in the circumstances of the transitional period in relation to the formation of the new District Council Areas there appeared to be undoubted practical necessity for the two Ordinances to be in concurrent operation, despite some inconvenience which would be caused;

(2) the Legislature by its deliberate act in not bringing into operation the section repealing the whole of the Municipal Ordinance had indicated its intention to keep the Ordinance alive;

(3) in this case there was no room for the application of the doctrine of implied repeal.

Case referred to:—

(1) *Lewis* v. *Berry* [1936] 1 Ch. 274.

COURT OF APPEAL.

M. Karthigesu for the appellant.

Philip Hoalim Sr. for the respondents.

Cur. Adv. Vult.

Buttrose J.: This appeal raises an interesting point as to whether the rating provisions in the Local Government Ordinance 1957 (No. 24 of 1957), which it was not disputed were inconsistent with the rating provisions in the Municipal Ordinance (Chapter 133 of the 1936 Edition), had by implication repealed them.

The facts which were not in dispute were briefly as follows:—

The respondents were the owners of No. 2 St. Thomas Walk, Singapore, having purchased the property in September 1957 and the annual value on which the property had been assessed at that time was $2,880.

Pursuant to the provisions of section 64 of the Municipal Ordinance a Notice dated the 23rd January 1958 to amend the annual value to $13,000 for the year 1958 was served by the appellant on the respondents the same day. The respondents were notified by the appellant on the 5th May 1958 that the Assessment Committee of the appellant, at its meeting held on the 22nd April 1958, had fixed the annual value of the property at $13,000 with effect from 1st January 1958.

The position was that the Local Government Ordinance was enacted on the 9th August 1957 and its purpose was to repeal and re-enact with amendments the Municipal Ordinance. All the provisions of the Local Government Ordinance, including those relating to rating, had been brought into operation by the 21st December 1957 with one important exception, namely, section 320(1) which provided for the repeal, *inter alia*, of the Municipal Ordinance.

It was argued on behalf of the respondents that as the provisions of the Local Government Ordinance relating to rating were subsequent to and inconsistent with those of the Municipal Ordinance they impliedly repealed them. Consequently, according to the respondents, they could not be assessed for the year 1958 under the Municipal Ordinance but only under the Local Government Ordinance and the Notice of amended assessment under section 64 of the Municipal Ordinance dated the 23rd January 1958 was bad in law and the assessment dated the 22nd April 1958 made in consequence thereof, under the provisions of the same Ordinance, was null and void and of no effect in law.

It is important to bear in mind that the section which made provision for the repeal of the Municipal Ordinance, namely, section 320(1), had not up to the date of the hearing of this appeal been brought into operation and, in my view, the failure to do so must be regarded as deliberate.

Here the Legislature had expressly enacted a provision repealing the Municipal Ordinance but had, it must be assumed, intentionally and deliberately refrained from bringing it into operation.

The stand taken by the appellant was, in effect, that the Municipal Ordinance and the Local Government Ordinance were in concurrent operation and that the former had neither expressly nor impliedly been repealed by the latter.

The position was unusual but the circumstances themselves regarding the transitional period and in relation to the formation of the new District Council Areas were peculiar and there would appear to be an undoubted practical necessity for the two Ordinances to be in concurrent operation, despite some inconvenience which would be caused.

By its deliberate act in not bringing into operation the section repealing the whole of the Municipal Ordinance the Legislature had, in my opinion, clearly indicated its intention to keep the Ordinance alive.

Furthermore, repeal by implication has never found favour in the Courts and such an interpretation is to be avoided unless inevitable. The case of *Lewis* v. *Berry* [1], to which we were referred, indicates that any reasonable construction which offers an escape from such an interpretation is more likely to be in accord with the real intention.

In my opinion there is no room in this case for the application of the doctrine of implied repeal and even if it could be invoked it would, I consider, be inexpedient and impracticable to do so.

An alternative argument was addressed to us that even if the Municipal Ordinance was repealed by the Local Government Ordinance the provisions of section 321(2) of the Local Government Ordinance could be invoked to extend the rating provisions of the Municipal Ordinance.

Having regard to the conclusion I have reached on the issue of whether there was an implied repeal of the rating provisions of the Municipal Ordinance it is unnecessary to deal with this point.

I rest my decision upon the finding that the Municipal Ordinance had not been repealed either expressly or by implication and its rating provisions and those in the Local Government Ordinance were and are in concurrent operation.

I am of opinion that this appeal should be allowed with costs.

Rose C.J.: I agree.

Ambrose J.: I agree.

Appeal allowed.

Solicitors: *Allen & Gledhill*; *Philip Hoalim & Co.*

SIVAGAMI ACHI v. P.RM. RAMANATHAN CHETTIAR & ANOR.

[O. C. J. (Ong J.) August 10, 1959]

[K.L. — Civil Suit No. 350 of 1958]

Practice and Procedure — R.S.C., O.19 r.27 — Application to amend or strike out defence — Whether each paragraph of the defence should be viewed in isolation or in relation to interconnected paragraphs — Effect of res judicata on issues raised in defence possibly not identical with those raised in previous action — Judicial notice of foreign law — Striking out defence as embarrassing on the ground that the law as pleaded may be bad.

Partnership — Effect of registration of name as partner — Whether registration as such estops co-partners from proving that the registered partner is a nominal or fictitious partner not entitled to any beneficial interest or to the reliefs claimed — Whether estoppel operates when true facts are known to the parties — Temporary arrangement made for mutual convenience — Condition precedent to attaching of obligation not performed — Defect in parties — Prima facie defence made out.

Foreign law — Judicial notice — Absence of expert evidence or arguments based on authoritative decisions.

This application under O. 19 r. 27 was made by the plaintiff, who claimed to be a partner in the money-lending firm of V.A.P.S. to amend or strike out the defence. The issues of fact and law as raised in the pleadings sufficiently appear from the judgment.

The plaintiff, *inter alia*, pleaded that on the death of her husband, a partner of the firm, intestate leaving no issue, his estate devolved on her as the sole beneficiary under the Mitakshara system of Hindu law: she was by mutual agreement with the co-partners registered as a partner under the relevant legislation; that income tax on her share of profits was paid in India by the surviving partners or their successors: that by orders of Court in 1947 and 1948 in proceedings, to which the co-partners were parties, certain lands, charges and subleases, forming part of the partnership assets, were vested in one Annamalai, one of the partners, as trustee as to one-quarter share thereof for her, being her share in the partnership and a trust deed to that effect was executed by him in 1948. In the action the plaintiff claimed dissolution of the partnership and other ancillary reliefs. Annamalai died intestate on April 27, 1957 and another partner also died intestate on March 2, 1958: no representatives to their estates had been appointed and the action was commenced only against the other two surviving partners.

Briefly the defence was, while admitting the fact of registration of her name as partner and the orders of court and payment of income tax in India, a total denial of partnership. It alleged that on the death of her husband intestate his estate devolved on the surviving co-partners, his three brothers, under the Hindu Law: that the plaintiff was only entitled to be maintained by them: secondly, that she was a nominal or fictitious partner not entitled to any reliefs; thirdly, that she was registered as a partner, merely as a temporary expedient in pursuance of a written agreement in 1935 to which she was a party, to preserve the estate of the deceased for a son to be adopted by her within 2 years "to their and her" satisfaction: that she had failed to adopt a son: the condition not having been complied with the trust in favour of the adopted son failed and the property reverted to the three brothers or their successors but the surviving co-partners were even then willing to allow her to adopt a son. The defence further contended that in the absence of the representatives of the deceased partners, the action was not maintainable.

Held, dismissing the application: (1) triable issues both on facts and in law have been raised and summary jurisdiction of the Court to strike out the defence cannot be invoked;

(2) each paragraph of the defence cannot be viewed in isolation but must be read in the context of interconnected paragraphs;

(3) on the meagre details placed before the Court it is not reasonably certain if the two orders of Court relied on by the plaintiff declared that the beneficial ownership of the lands, charges and leases ever passed to her and *prima facie* the defence does not seek to retry the previous actions and the plea of *res judicata* ought not to be tried under O. 19 r. 27 or, in any event, without more precise information;

(4) the Court is not entitled to take judicial notice of Hindu law and in the absence of expert evidence or arguments based on authoritative decisions as to rules of intestate succession cannot decide whether upon the death of the plaintiff's husband, his estate devolved on the plaintiff or, as is contended, on 3 surviving brothers, the co-partners;

(5) registration of name as a partner, though strong *prima facie* evidence of partnership, does not estop the co-partners from proving that the plaintiff was a nominal or fictitious partner under a temporary mutual arrangement made to carry out the agreement of 1935, alleged in the defence, that the share of the intestate in the partnership would only ensure to the benefit of a son to be adopted by her, which event had not happened;

(6) the action is defective for non-joinder of the representatives of two deceased partners and the defendants are under no duty to remedy the defect.

Cases referred to:—

(1) *Knowles* v. *Roberts* 38 Ch. D. 263.